

DECISION



11848 PL-II
Wickopf
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-194906

DATE: October 29, 1979

MATTER OF: Castoleum Corporation — DLG-03198

DIGEST:

1. [Protest concerning sole-source procurement] is timely since in absence of objective evidence to contrary doubt as to date on which protester knew or should have known protest basis is resolved in favor of protester.
2. Protest of sole-source procurement is denied where protester fails to show unreasonableness of determination that legitimate needs of agency can only be satisfied by single source.
3. Propriety of evaluation of unsolicited proposal submitted during sole-source procurement will not be questioned where protester fails to present clear evidence of fraud, abuse of authority, or arbitrary agency action; GAO will not question agency determination not to field test protester's product where protester failed to submit evidence to agency reasonably establishing "equivalence" of its offered product.

— DLG-03197
Castoleum Corporation (Castoleum) protests the sole-source award of a contract to Mohawk Data Science Corporation (Mohawk) to supply the Defense Fuel Supply Center, Defense Logistics Agency (DLA), with a lubricant for high speed card punch assemblies.

— DLG-01788
On July 25, 1978, DLA issued request for proposals (RFP) DLA600-78-R-0819 for approximately 1,500 pints of "Soroban 90", a lubricant exclusively supplied by Mohawk. DLA specified Soroban 90 because it knew of no other product capable of functioning satisfactorily with the card punch assemblies. Although a chemical formula is available for Soroban 90, the manufacturing of the product entails a special proprietary process essential for its use as a lubricant in the card punch assemblies.

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DLA synopsised the solicitation in the Commerce Business Daily and subsequently received a telephone call from Castoleum inquiring about the possibility of participating in the procurement. In the interest of obtaining competition, the contracting officer stated that DLA would send Castoleum a copy of the RFP and asked Castoleum to submit a sample of its product for laboratory testing by the Air Force. The contracting officer further stated that in addition to the laboratory analysis, field testing would be required to determine the acceptability of Castoleum's product.

Before the closing date for receipt of proposals on August 28, 1978, Castoleum offered to supply the lubricant "Trizol-RBS", produced by Exxon, at \$9.50 per pint. Mohawk offered its Soroban 90 at \$10.28 per pint. The Air Force laboratory analysis, received by DLA in November 1978, indicated that Trizol-RBS possessed different chemical characteristics than Soroban 90. Trizol-RBS was significantly less viscous and lacked a chemical component contained in Soroban 90. The Air Force also advised DLA that approval for field testing of Castoleum's product must come from the Army Communications and Electronics Materiel Readiness Command (Army), item manager for the card punch assemblies.

On November 28, 1978, DLA asked the Army whether it would field test Castoleum's Trizol-RBS. The Army refused, primarily because Castoleum's product possessed different chemical characteristics than Soroban 90 and because of the potentially expensive cost of field testing. DLA subsequently awarded the contract to Mohawk on May 11, 1979. Castoleum filed its protest with this Office on May 18.

As an initial matter, DLA alleges that on January 30, 1979, the Air Force chemist, at the direction of the contracting officer, telephonically notified Castoleum of the laboratory test results and of the Government's decision not to field test Castoleum's product. DLA contends that this telephone call constituted rejection of Castoleum's proposal,

and that our Bid Protest Procedures required Castoleum to file its protest within 10 working days of such rejection. Castoleum, however, claims to have no knowledge of the alleged January 30 phone call, and denies ever having been officially informed that its product was unacceptable until DLA awarded the contract to Mohawk.

Generally, we have held that any doubt as to the date on which knowledge of a basis for protest was or should have been obtained should be resolved in favor of the protester, absent objective evidence to the contrary. See Memorex Corp., 57 Comp. Gen. 865 (1978), 78-2 CPD 236. Where, as here, the only evidence in the record as to the date on which the protester initially received notice of the basis for its protest is the conflicting undocumented statements of the protester and the agency, we believe sufficient doubt exists. We therefore find Castoleum's protest timely.

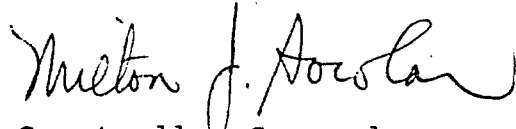
A sole-source procurement will be questioned if the protester shows that the contracting agency lacked a reasonable basis for making a sole-source award. Metal Art, Inc., B-192901, February 9, 1979, 79-1 CPD 91; Northwest Marine Technology, Inc., B-191511, July 13, 1978, 78-2 CPD 33. A reasonable basis exists where the legitimate needs of the agency can only be satisfied by a source which the agency believes to be the only firm capable of producing the item. Julian A. McDermott Corporation, B-191468, September 21, 1978, 78-2 CPD 214.

We believe that Castoleum has not shown that the contracting agency acted unreasonably. Castoleum has submitted no evidence to DLA or to this Office indicating that its product or that of any other firm except Mohawk could satisfactorily lubricate the card punch assemblies. Castoleum has merely alleged in its protest that "our product has been and is currently being used satisfactorily by one of the largest manufacturers of computers in the world", without specifying the manufacturer or submitting any supporting documentation. This unsupported allegation does not establish the unreasonableness of DLA's position, and therefore our Office will not question the sole-source award.

Furthermore, we do not believe that the agency abused its discretion or otherwise acted unreasonably in refusing to field test Castoleum's product since the protester, other than submitting a gallon "sample", provided no information or documentation to the contracting officer reasonably establishing the "equivalence" of its offered product. We do not believe that an agency is required to conduct extensive and potentially expensive tests of a product offered as an "equal" solely on the basis of unsupported and unsubstantiated allegations of equivalence by an offeror.

Castoleum also alleges certain deficiencies in Mohawk's past performance. However, these allegations clearly involve the propriety of DLA's affirmative determination of responsibility which our Office does not review unless either fraud on the part of procuring officials is alleged, or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Julian A. McDermott, supra. Neither exception is applicable here.

The protest is denied.



For the Comptroller General
of the United States